

# OFFICE OF THE ATTORNEY GENERAL 85-00434



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Legislation - Bail Bonds -  
Surety Bonds - Bonds

Constitutionality of Act No.  
81-427 must be determined by  
the Courts.

Under Act No. 81-427 a bonding  
company cannot post a corporate  
surety bond with City of Phenix  
City instead of cash or a  
certificate of deposit as  
required by the Act.

Dear Mr. Loftin:

The Attorney General received your request for an  
opinion on the behalf of the City of Phenix City regarding  
Act No. 81-427, Acts of Alabama 1981, p. 673. The following  
questions were posed:

- "(1) Is Act No. 81-427 of the Alabama  
Legislature in conflict with § 105  
of the Alabama Constitution of 1901  
and therefore invalid?
- (2) If said Act is not unconstitutional,  
may a corporate surety bond be used  
in lieu of cash as contemplated in  
the Act?"

Act No. 81-427 is a local act which relates to Phenix  
City and provides for qualifications to engage in the bail  
bond business for the release of persons held by the City of  
Phenix City.

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In answer to the first question, Section 105 of the Constitution of Alabama 1901 prohibits the enactment of a local, special or private law in cases provided for by general law. It is normally the policy of the Attorney General not to issue opinions regarding the constitutionality of statutes as it is the function of the courts to make such determinations. Therefore, the Attorney General refrains from making a determination on the constitutionality of Act No. 81-427 at this time.

Regarding the second question presented, the answer is in the negative. The pertinent part of Act No. 81-427 states:

Section 1. Each person, company, or corporation, making bonds and charging therefor, within the city of Phenix City, for the release of persons held by such city shall be required as a part of the qualification to do business to post a cash deposit with the city of Phenix City or to take out a certificate of deposit payable to the city of Phenix City, in the amount of any bonds made by any such person, company, or corporation.

Such funds shall be held to guarantee the payment of all sums of money that may be due to the city of Phenix City by virtue of any judgment absolute being rendered against said person, company, or corporation as surety on any bond or bonds.  
(Emphasis added)

The statute specifically requires a person, company or corporation making bonds and charging therefor within the City of Phenix City for the release of persons being held by the city to post a cash deposit with the city or to take out a certificate of deposit payable to the city in the amount of the bonds made by such person, company or corporation. There is no mention that the person, company or corporation can post a corporate surety bond in lieu of cash. In Holcombe v. Pierce, 253 Ala. 173, 43 So.2d 640 (1949) the Supreme Court of Alabama concluded that a bail bondsman is not qualified to do business when he has not complied with the conditions upon which he is authorized by law to engage in business. In

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statutory construction, the general rule is that where language of a statute is clear and unambiguous, the clearly expressed intent must be given effect and there is no room for construction. Alabama Industrial Bank v. State ex rel. Avinger, 286 Ala. 59, 237 So.2d 108 (1970). Therefore, it is the opinion of the Attorney General that under Act No. 81-427 a bonding company cannot post a corporate surety bond with the city in lieu of cash or a certificate of deposit as required by that Act.

I hope that the questions of the City have been adequately answered.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By:

A handwritten signature in cursive script, appearing to read "Lynda K. Oswald".

LYNDA K. OSWALD  
Assistant Attorney General

LKO/dn